

In re Application of: Poplawski *et al.*
Application No.: 10/637,161
Atty Docket No.: 36400.35US2

Examiner: T. Lewis
Art Unit: 3681

REMARKS

By this response, in the Present Application, no Claims have been cancelled, and originally-submitted Claims 1-5, 9-11, 13, 15 and 20 have been amended. As such, Claims 1-22 remain pending in the Present Application, with Claims 19-22 standing as allowed.

In the Office Action, the Examiner objected to the disclosure, noting a typographical error contained therein. In response, Applicant respectfully submits the appropriately-amended Paragraph set forth herein.

Also in the Office Action, Claims 1-2 were separately rejected under 35 U.S.C. § 102(b) and § 102(e) as being anticipated by Peter, U.S. Patent No. 5,894,907 and Osuga *et al.*, U.S. Patent No. 6,460,886. Also in the Office Action, the Examiner rejected, under 35 U.S.C. § 103(a), Claims 5, 7-11 and 14-17 as being unpatentable over Peter in view of Hauser *et al.*, U.S. Patent No. 6,223,531 and Osuga in view of Hauser, Claims 4 and 6 over Peter in view of Yoshina *et al.*, U.S. Patent No. 6,131,316; and Claim 18 over Peter and Osuga in view of Hauser and further in view of Yoshina.

The Examiner also propounded a 35 U.S.C. 103(a) rejection based on Peter in view of Boyer *et al.*, U.S. Patent Application No. 2002/0170384 and Osuga in view of Boyer. However, it is unclear which Claims are rejected by this rejection.

It is well settled that a rejection under 35 U.S.C. § 102 requires a single reference to disclose each and every element set forth in a claim under consideration. In this regard, all of the limitations of a claim, including functional limitations, must be considered when weighing the differences between the claimed invention and the single

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cited reference. Meanwhile, a rejection under 35 U.S.C. § 103 requires some suggestion or motivation to modify one or more cited references to arrive at each and every element set forth in a claim under consideration. However, when considering obviousness, it is impermissible to use hindsight, or the Applicant's disclosure, to provide the necessary suggestion or motivation.

It is submitted that the cited references neither disclose nor suggest each and every limitation set forth in the Claims at issue. By way of example, none of the cited references, alone or in combination, disclose the claimed vehicle of Independent Claim 1, which comprises a vehicle frame having at least one vertically-oriented side frame member; a transmission housing directly mounted to a vertical face of the at least one vertically-oriented side frame member; a hydrostatic transmission mounted in the transmission housing and comprising a hydraulic pump and hydraulic motor connected through a hydraulic circuit; and an axle shaft driven by the hydraulic motor and extending perpendicular to the at least one vertically-oriented side frame member; wherein the axle shaft extends through the at least one vertically-oriented side frame member. Similarly, none of the cited references, alone or in combination, disclose the claimed vehicles of Independent Claim 1.

Further, the Present Application both discloses (and Independent Claim 1, as amended, claims) an axle shaft that extends through the at least one vertically-oriented frame member. By contrast, neither *Peter* nor *Osuga* disclose an axle shaft extending through the frame members.

More specifically, the frame members in *Peter* (Reference Numeral 71; referenced in *Peter* as "frame interconnect arms") do not provide a means (*i.e.*, an

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opening) through which an axle shaft may be permitted to pass. See, e.g., *Peter*, FIGS. 2-3. FIG. 3 accurately depicts output shaft (40) as being "mounted to the outer case 16 of the reduction system;" thus, indicating that the output shaft (40) does not pass through frame interconnect arms (71). *Peter*, FIG. 3; Col. 2, Lines 64-66.

Further, with reference to *Osuga*, frame members (5A, 5B; referenced in *Osuga* as "right and left body frames," respectively) join vertical plate posts 47 in a position rearward of rear axles 20. See, e.g., *Osuga*, FIG. 2. FIG. 2, which illustrates a top level view of the disclosed vehicle, accurately illustrates this distinction. *Osuga*, FIG. 2; Col. 5, Lines 60-65.

Thus, it cannot be said that either *Peter* or *Osuga* discloses each and every limitation of Independent Claim 1, as amended. As a result, Applicant respectfully asserts that the rejections of Independent Claim 1, as amended, be withdrawn. By extension, Applicant respectfully requests that the rejections of Claim 2, which is dependent upon Independent Claim 1, also be withdrawn.

With reference to the § 103(a) rejections of Claims 3-8, Applicant respectfully submits that, for the reasons stated above concerning both *Peter* and *Osuga*, neither the combinations of *Peter* and *Boyer*, *Osuga* and *Boyer*, *Peter* and *Hauser* nor *Osuga* and *Hauser* discloses an axle shaft that extends through the at least one vertically-oriented side frame member, as is required by Independent Claim 1, as amended. Thus, it cannot be said that the combined references suggest each and every limitation set forth in Claims 3-8. Applicant thus requests the withdrawal of these rejections.

With reference to the § 103(a) rejections of Independent Claim 9, Applicant respectfully submits that the combinations of *Peter* and *Hauser* and *Osuga* and *Hauser*

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fail to disclose each and every element present in Independent Claim 9, as amended.

That is, the cited combinations do not disclose, at least, in integrated hydrostatic transmission mounted in the transmission housing and comprising a hydraulic pump and a control mechanism for controlling the output of the hydraulic pump.

More specifically, Independent Claim 9, as amended, is not rendered obvious by the two cited combinations as a result of the requirement of an integrated hydrostatic transmission. The disclosures of *Peter*, *Osuga* and *Hauser* fail to disclose and contemplate the use of an integrated hydrostatic transmission mounted to the transmission housing, which is directly mounted to a vertical face of the at least one vertically-oriented side frame member of the vehicle frame. In fact, the means by which the integrated hydrostatic transmission is mounted to the vehicle frame is distinctively different from that required by Independent Claim 9, as amended. Therefore, both combinations, *Peter* and *Hauser* and *Osuga* and *Hauser*, teach away from the requirements of Independent Claim 9, as amended.

Further, the cited combinations also do not disclose a control arm having a first portion located inside the transmission housing and engaged to the control mechanism and a second portion located between the transmission housing and the side frame member. As the Examiner states, *Peter* and *Osuga* disclose the same limitations as in Independent Claim 1 (*i.e.*, the first three elements), but does not disclose a control arm engaged to the control mechanism. The Examiner then uses *Hauser* as disclosing a control arm. While *Hauser* does, in fact, disclose a control arm, the disclosure of *Hauser* does not disclose a vehicle having at least one vertically-oriented side frame

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member. This is notable because Independent Claim 9 describes the location of the control arm vis-à-vis the side frame member.

Thus, because *Hauser* does not disclose a control arm having a first portion located inside the transmission housing and engaged to the control mechanism and a second portion located between the transmission housing and the side frame member, as is required by Independent Claim 9, Applicant asserts that the combinations of *Peter* and *Hauser* and *Osluga* and *Hauser* fail to disclose each and every element present in Independent Claim 9, as amended.

Applicant therefore requests that the rejection of Independent Claim 9 be withdrawn. With reference to the various §103(a) rejections of Claims 10-18, Applicant respectfully submits that, for the reasons stated above, the combinations suggested by the Examiner do not disclose each and every element presented in the Claims dependent on Independent Claim 9. Applicant thus requests the withdrawal of these rejections, as well.

Applicant submits that any amendments to the Claims that were not made in response to the Examiner's objections or rejections were made for non-statutory purposes. Accordingly, any such amendments should not limit the scope of the Present Invention, which is to be given the full breadth of the claim language and any equivalents thereof.

Based on the foregoing Amendments and Remarks, the Present Application is considered to be in condition for allowance. Such action on the part of the Examiner is respectfully requested. If the Examiner feels a telephonic conference would expedite

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the allowance of the Present Application, it is suggested the Examiner contact the undersigned Attorney.

It is further believed that no fee is due for the filing of this Response. If such is not the case, any fee due may be charged to our firm's Deposit Account No. 502261.

Respectfully submitted,

Date: 12 April 2005



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By 
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